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FREEDOM OF INFORMATION ACT - LEGISLATION

There are currently two legislative initiatives being pursued to afford greater protection of our most sensitive raw intelligence files from search and review under the FOIA. These initiatives will amend the National Security Act of 1947 by allowing the DCI to designate as exempt from FOIA search and review certain operational files in the DO, DDS&T and a limited number of OS files. The bills are Senate, S 1324 and the House version is HR 3460. Both bills are essentially the same with some modifications in the House bill which was introduced after the Senate version.

The SSCI has held hearings on the Senate bill and it is expected to be reported out to the Senate about mid September 1983.

The House bill had not been scheduled for hearing but the HPSCI staff has been working with the Agency to resolve a number of issues that concern both the House and the Senate. There are a number of key issues that continue to plague both bills that are listed below:

- o Historical Access: The concern is that historians will never have access to operational material that is designated exempt from the FOIA search and review. This issue seems resolvable by the DCI's discretionary authority to open specific operational files for search and review when it becomes public knowledge and public benefit is apparent. A review of file designations after 35 years is also a consideration.
- o Impriorities: This issue concerns designated files that would be subject to an FOIA request charging an intelligence illegality or impriority. The focus at present is if there has been an IG inspection on the question of an impriority then operational files will be subject to search and review on that specific topic. In essence, every allegation by the public would not dictate the search of designated operational files.
- o Judicial Review: This issue involves the judicial review of designation of files by judges in ruling on FOIA litigations that come before the courts. That is to say our file designations would be subject to review by the courts on a continuing basis. This would create new FOIA case law and, if this issue cannot be resolved it may create an impasse that could kill these initiatives.